APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1971

Civil Action No. 36-70

No. 71-1236

WILLIAM E. DEESE

v.

NOAH C. A. WALTER, Deputy Commissioner, U. S. Department of Labor, Bureau of Employees' Compenstion

* * *

CAPITOL TILE AND MARBLE, INC. and THE HOME INDEMNITY COMPANY, *Appellants*

Filed June 19, 1972

Appeal from the United States District Court for the District of Columbia.

Before: BAZELON, Chief Judge, WRIGHT, Circuit Judge, and CHARLES EDWARD WYZANSKI, JR.,* Senior United States District Judge, District of Massachusetts.

Judgment

This case came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. *See* Local Rule 13(c).

Per Curiam

* Sitting by designation pursuant to 28 U.S.C. § 294(d) (1970).

On consideration of the foregoing, and for the reasons stated by the District Court, it is ORDERED and ADJUSTED by this court that the judgments of the District Court appealed from in this cause are hereby affirmed.

Filed Feb. 17, 1971

Order

This matter came on for consideration on intervenors' motion to vacate judgment and to dismiss the case. Briefs were submitted and counsel argued the motion in open Court on February 12, 1971. Intervenors' motion to the effect that the Court lacked jurisdiction to have decided the present matter. Intervenors' motion rests upon an interpretation of Section 921 of the Longshoremen's and Harborworkers' Compensation Act (33 U.S.C. § 901 et seq.), as made applicable to the District of Columbia by virtue of Title 36, District of Columbia Code, Section 501, Intervenors contend that the exclusive method of judicial review of actions of the Deputy Commissioner is provided by 33 U.S.C. § 921, to the effect that an appeal may be brought in the Federal district court for the judicial district in which the injury occurred or in the United States District Court for the District of Columbia if the injury occurred in the District. In support of this point intervenors rely on cases in the 8th and 9th Circuits,[1] holding that Section 921 is jurisdictional and not just a question of venue. The Deputy Commissioner and the plaintiff both strenuously oppose the intervenors' motion to dismiss. They cite in their briefs numerous cases in which injury occurred in a place other than in the District of Columbia yet where the jurisdiction of the District Court to decide the matter was assumed

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[1] *Continental Fire and Casualty Insurance Company* v. *O'Leary*, 236 F.2d 282 (9th Cir. 1956); *Bassett* v. *Massman Construction Company*, 120 F.2d 230 (8th Cir. 1941), *cert. den.* 314 U.S. 648 (1941).

without discussion.[2] The Court finds that in view of these numerous decisions in the United States Court of Appeals for the District of Columbia and also in the Supreme Court of the United States, jurisdiction is properly vested in the District Court for the District of Columbia. To hold otherwise would be to deny a forum to those employees covered by the D. C. Workmen's Compensation Act who are injured outside the United States. Intervenors tried to distinguish these situations from the present case. The Court finds, however, no adequate basis for distinction. This decision is in part motivated by the unique position of the District of Columbia and the extraterritorial provisions of its Workmen's Compensation Act.

It is therefore by the Court this 17 day of February, 1971,

ORDERED that the intervenors' motion to vacate judgment and to dismiss the case be and the same hereby is overruled.

OLIVER GASCH
Judge

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[2] *Cardillo, Deputy Commissioner* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 472 (1947), rev'g 81 U.S.App.D.C. 72, 154 F.2d 529, Fort Belvoir, Va.; *Amalgamated Ass'n* v. *Adler, Deputy Commissioner*, 119 U.S.App.D.C. 274, 340 F.2d 799, 800 (1964), Toronto, Canada; *U. S. Fidelity & Guaranty Co.* v. *Donovan, Deputy Commissioner*, 221 F.2d 515, 517 (1954), Maryland; *Jonathan Woodner Co.* v. *Mather*, 93 U.S.App.D.C. 234, 210 F.2d 868, 869 (1954), *cert. den.* 348 U.S. 824, Maryland; *Robinson* v. *Bradshaw, et al.*, 92 U.S.App.D.C. 216, 206 F.2d 435 (1953), *cert. den.* 346 U.S. 899, Wakefield, Va.; *Gasch* v. *Britton, Deputy Commissioner*, 92 U.S.App.D.C. 64, 202 F.2d 356, 357 (1953), Maryland; *Travelers Ins. Co.* v. *Cardillo, Deputy Commissioner*, 78 U.S.App.D.C. 392, 141 F.2d 362, 363 (1944), Maryland; *Travelers Ins. Co.* v. *Cardillo, Deputy Commissioner*, 78 U.S.App.D.C. 394, 141 F.2d 364 (1944), Virginia; *B. F. Goodrich Co., et al.* v. *Britton, Deputy Commissioner*, 78 U.S.App.D.C. 221, 139 F.2d 362, 364 (1943), Pennsylvania; *Moyer* v. *Cardillo, Deputy Commissioner*, 73 U.S. App.D.C. 261, 119 F.2d 785 (1941), Maryland; *Standard Acc. Ins. Co.* v. *Hoage, Deputy Commissioner*, 62 App.D.C. 245, 66 F.2d 275 (1933), Virginia.

Order

This matter came on before the Court on cross motions for summary judgment. The plaintiff seeks a reversal of the defendant Deputy Commissioner's rejection of his claim for workmen's compensation benefits pursuant to 33 U.S.C. § 901 *et seq.* and 36 D.C. Code § 501.

The Deputy Commissioner denied the benefits stating that claim did not come within the jurisdiction of the District of Columbia workemen's Compensation Act. The pertinent section of the Act reads as follows:

> The provisions of Title 33, Chapter 18 of the Code of Laws of the United States, including all amendments ... shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person. (36 D.C. Code § 501).

This section of the Code has been interpreted in a number of cases,[1] the leading one being *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469 (1947):

> Nothing in the history, the purpose or the language of the Act warrants any limitation which would preclude its application to this case. The Act in so many words applies to every employee of an employer carrying on any employment in the District of Columbia 'irrespective of the place where the injury or death

[1] *Gudmundson* v. *Cardillo*, 126 F.2d 521 (1942); *United States Fidelity and Guaranty Co.* v. *Donovan*, 221 F.2d 515 (1954); *Travelers Insurance Company* v. *Cardillo*, 141 F.2d 362 (1944); *Moyer* v. *Cardillo*, 119 F.2d 785 (1941); *J. V. Vozzolo, Inc.* v. *Britton*, 377 F.2d 144 (1967).

occurs.' Those words leave no possible room for reading in an implied exeception excluding those employees like Ticer who have substantial business and personal connections in the District and who are injured outside the District. (at 475)).

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Rather it depends upon some substantial connection between the District and the particular employee-employer relationship, a connection which is present in this case. (at 476).

The *Cardillo* case has been augmented by a number of cases which decided on a case-by-case base whether there were sufficient contracts with the District.

In the instant case there would appear to be a number of contracts of the plaintiff with the District (the plaintiff spent one third of his time working in the District; the employer has considerable work in the District, at the time of the injury four of seven jobs were in the District; the plaintiff worked in the District the very morning he was injured; the plaintiff was paid in the District whenever he was working there). The Court, therefore, finds that there was "some substantial connection" between the plaintiff and the District of Columbia and for this reason feels that the decision of the Deputy Commissioner was apparent error and should be reversed.

Wherefore, it is by the Court this 23rd day of December, 1970,

ORDERED that the plaintiff's motion for summary judgment be and the same hereby is granted; and it is further

ORDERED that the defendant's motion for summary judgment be and the same hereby is denied.

OLIVER GASCH
Judge

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
DISTRICT OF COLUMBIA COMPENSATION DISTRICT

Case No. 36718

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act

WILLIAM E. DEESE *Claimant*

VS.

CAPITOL TILES & MARBLE, INC. *Employer*

THE HOME INDEMNITY COMPANY *Insurance Carrier*

Compensation Order
Rejection of Claim

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in comformity with law, the Deputy Commissioner makes the following

FINDINGS OF FACT

1. That on April 20, 1968, the claimant above named was in the employ of the employer above named, whose address is 2413 Kenton Place, Hillcrest Heights, Maryland; that the employer was subject to the provisions of an Act of Congress approved May 17 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes"; that the liability of the employer for compensation under the said Act was insured by the Home Indemnity Company;

2. That on the said day the claimant, while performing services for the employer as a tile mechanic at Maryland University in the State of Maryland, slipped and twisted his left knee when he attempted to get up from a stooped postion, which caused him to fall to the floor, as a consequence of which he suffered an injury to his left knee and right hand; that subsequent to the injury of April 20, 1968, sustained by the claimant in Maryland, he worked at Saint Elizabeth's Hospital in Washington, D.C.;

3. That on April 16, 1969, the claimant filed for compensation payments for temporary total disability from February 15, 1969 to April 27, 1969, and for reasonable medical expenses under the District of Columbia Workmen's Compensation Act;

4. That a hearing was held on the said claim on October 21, 1969, at which time the employer and the insurance carrier raised objections to the said claim, including the objection that the claim does not come under the jurisdiction of the District of Columbia Workmen's Compensation Act;

5. That the claimant was a resident of Maryland, and was for a period of one and one-half years in the employ of Capitol Tiles & Marble Company, 2413 Kenton Place, Hillcrest Heights, Maryland; that the claimant was a member of local No. 3, Terrazzo and Tile Workers Union, AFL-CIO with headquarters in the District of Columbia; that the claimant was subject to assignment by the employer to perform duties of the employment in Maryland, Virginia and the District of Columbia; that the employer was licensed to perform business in the District of Columbia; that the claimant was not performing any services for the employer in the District of Columbia within the meaning of the District of Columbia Workemen's Compensation Act at the time of his injury of April 20, 1968.

Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim for the compensation against the employer under the District of Columbia Workmen's Compensation Act be and it hereby is REJECTED for the following reason:

1. That the claim does not come under the jurisdiction of the District of Columbia Workmen's Compensation Act.

Given under my hand and filed at Washington, D. C. this eighth day of December, 1969.

NOAH C. A. WALTER
Deputy Commissioner
District of Columbia Compensation District